

## ORAL ARGUMENT NOT YET SCHEDULED

No. 23-1274

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION  
AUTHORITY D/B/A METRA,

*Petitioner,*

v.

SURFACE TRANSPORTATION BOARD  
and UNITED STATES OF AMERICA,

*Respondents.*

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**RESPONDENT SURFACE TRANSPORTATION BOARD'S  
UNOPPOSED MOTION TO CONSOLIDATE**

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The Surface Transportation Board hereby moves to consolidate the petition for review filed by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) with consolidated cases 23-1125 and 23-1165, also pending before this Court. Counsel for the Board has contacted counsel for all parties in this proceeding, as well as all parties in cases 23-1125 and 23-1165, and none oppose the motion.

Metra seeks review of the Board's March 15, 2023, order approving, with conditions, Canadian Pacific Railway Limited's acquisition and control of The

Kansas City Southern Railway Company and its railroad affiliates (*Approval Decision*), as well as the Board’s September 1, 2023, order resolving Metra’s request for administrative reconsideration. Petitioners in consolidated cases 23-1125 and 23-1165—Union Pacific Railroad Company (Union Pacific) and The Coalition to Stop CPKC (Coalition)—also seek review of the *Approval Decision*.

Consolidation would be consistent with the Court’s policy favoring consolidation of “all petitions for review of agency orders entered in the same agency proceeding.” *D.C. Cir. Handbook of Practice and Internal Procs.* 24 (2021) (consolidation advances “efficient use of the Court’s resources” and “consistency in its decisions”); *see also Sunland Const. Co. v. NLRB*, Nos. 92-1667 & 93-1173, 1993 WL 341017, at \*1 (D.C. Cir. Aug. 6, 1993) (applying the handbook). It would also be consistent with this Court having consolidated, on its own motion, earlier-filed petitions seeking review of the *Approval Decision*. *See Order, Union Pacific R.R. Co. v. STB*, Nos. 23-1125 & 23-1131 (consol.) (D.C. Cir. May 16, 2023) (consolidating Metra’s originally-filed petition with Union Pacific petition);<sup>1</sup> *Order, Union Pacific R.R. Co. v. STB*, Nos. 23-1125, 23-1131, &

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<sup>1</sup> The Court dismissed Metra’s originally-filed petition because Metra had sought both agency rehearing and judicial review of the *Approval Decision*. *See Order, Union Pacific R.R. Co. v. STB*, Nos. 23-1125, 23-1131, & 23-1165 (consol.), slip op. at 1-2 (D.C. Cir. Aug. 3, 2023).

23-1165 (consol.) (D.C. Cir. June 29, 2023) (consolidating Coalition's petition with Union Pacific and Metra petitions).

Consolidation will not affect the procedural schedule in consolidated cases 23-1125 and 23-1165. Briefs have not yet been filed in those proceedings, nor has a briefing schedule been entered. Both proceedings are currently in abeyance, with the parties required to file motions to govern future proceedings by November 17, 2023. *See Order, Union Pacific R.R. Co. v. STB*, Nos. 23-1125 & 23-1165 (consol.) (D.C. Cir. Oct. 2, 2023).

Because Metra's petition seeks review of the same agency order for which Union Pacific and the Coalition seek review, in the interest of judicial economy and to promote consistency of decisions the Court should grant this unopposed motion to consolidate.

Respectfully submitted,

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